

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH Nos. 2023090079 and 2023090083

DDS Nos. CS0009188 and CS0009230

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on October 10, 2023.

Claimant's mother was present and represented claimant who was not present. Claimant's father was also present.

Neil Kramer, Fair Hearing Manager, represented San Diego Regional Center (SDRC).

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on October 10, 2023.

ISSUES

1. Should SDRC reimburse the claimant's family for the costs associated with a one-to-one aide, which the family provided, during his attendance at camp?
2. Should SDRC reimburse the claimant's family for claimant's attendance at the City of San Diego's Therapeutic Recreation Services (TRS) Camp Wet n' Wild?
3. Should SDRC provide funding for speech therapy services through Speech Tree Speech Therapy Services?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 22-year-old male diagnosed with autism spectrum disorder and mild intellectual disability. Claimant recently aged out of the education system and is seeking an adult program. He is currently authorized to receive 10 hours of out-of-home respite with Stein Special Care Services funded by SDRC. He receives 282 IHSS hours provided by his mother.

2. In emails to SDRC on April 14, 2023, and April 24, 2023, claimant's mother requested speech therapy, approval for camp, and Applied Behavioral Analysis (ABA) services to support claimant 1:1 at camp. Claimant's mother and SDRC exchanged emails during the following weeks. At no time did SDRC agree to fund the requested services.

3. On June 15, 2023, SDRC staff met with claimant's mother and father via Zoom to discuss their requests and a resolution.

4. On July 13, 2023, SDRC sent claimant's parents a good faith letter, confirming its understanding of the outcome of the June 15, 2023, meeting, including that the request for speech therapy services had been denied.

5. On August 25, 2023, claimant's mother filed an appeal and request for a fair hearing (OAH No. 2023090079, DDS No. CS0009188), appealing the denial of speech therapy, requesting reimbursement for a 1:1 aide for camp, and emergency vendorization.¹

6. On August 25, 2023, SDRC issued a Notice of Action (NOA) denying claimant's requests for speech therapy and reimbursement for camp and a 1:1 aide at camp.

7. On August 29, 2023, claimant's mother filed an appeal and request for a fair hearing (OAH No. 2023090083, DDS No. CS0009230), requesting reimbursement for a 1:1 aide so claimant could attend camp.

8. By order dated October 2, 2023, the matters were consolidated for hearing.

¹Although claimant's mother included emergency vendorization as one of the reasons for her appeal, claimant had not requested emergency vendorization and SDRC had not issued a NOA denying emergency vendorization. This issue was not part of this hearing.

Claimant's Evidence

9. The testimony of claimant's mother is summarized as follows: Claimant has limited opportunities for activities he can participate in because he needs so much support. He is not verbal and he has significant behavioral issues, including aggressive behavior. Claimant's father retired early to help care for him.

10. On April 14, 2023, she sent an email to Victor Moran, claimant's service coordinator, stating that claimant would be leaving the education system soon and that she wanted to find a day program for him. Camps were an option. She anticipated claimant would need more support than the camps could offer because of his behavior issues, mainly toileting accidents, at school. She asked for 60 hours of ABA services to provide a 1:1 aide for camps. She did not receive a denial from SDRC. She signed claimant up for Camp AWARE (Camp I CAN) and TRS Camp Wet n' Wild, as these were camps he had attended before and the camp staff were familiar with him. She paid out-of-pocket for both camps. She was not aware whether SDRC had approved claimant's attendance at Camp AWARE.

In early July 2023, claimant was not able to complete the week at Camp AWARE. He had "too many issues," including toileting issues, and stealing food in the community. His parents were asked not to bring him back for the last two days of camp. The camp had three staff members assisting claimant and they were still not able to handle his behaviors. She hired a staff member from claimant's old school to provide 1:1 assistance for claimant at TRS camp Wet n' Wild. He successfully completed that camp. Claimant's mother said she had no other options. She felt claimant could be successful with the right support; she found the right support but unfortunately it did not meet SDRC's criteria. She provided SDRC with contact

information for the TRS camp. She is seeking reimbursement for the \$250 cost of the camp and for the \$750 she paid for the 1:1 camp aide.

11. Claimant received speech therapy through his insurance, Kaiser Permanente. The speech therapist was not familiar with claimant's Augmentative and Alternative Communication (AAC) device using Proloquo2go that he uses to assist in communication. The speech therapist was not able to manage claimant's behaviors. Claimant's parents terminated the services.

Claimant's mother hired a speech therapist from Speech Tree Services. The therapist worked with claimant at his former school and she is able to manage his behaviors. She works with claimant two times per week for 30 minutes to help with communication. Claimant was recently approved for six hours per week of insurance-funded ABA services, which he receives three times per week for two hours. The speech therapist is training the ABA staff on the Proloquo2go system and how to manage claimant's behaviors.

Claimant's mother asked that SDRC fund the speech therapy being provided by Speech Tree because SDRC has a vendor agreement with Speech Tree. She understands SDRC requires a letter of denial from Kaiser, but Kaiser has not denied the service. The issue is that what Kaiser offered was not appropriate for claimant.

12. Claimant's mother and father started a nonprofit, Casa de Mosaic, to create adapted job opportunities for individuals with intellectual disabilities. They purchased/rented a small building in a retail area and are working to get the program up and running. Claimant receives his ABA therapy and speech therapy in this building.

SDRC Evidence

TESTIMONY OF ZACHARY GUZIK, CLIENT SERVICES MANAGER

13. Zachary Guzik is a manager of client services for SDRC where he oversees children and adolescent units for clients ages 6 to 22. He has been with SDRC for one and one-half years. His background is in special education. He previously worked as a high school special educator and managed a behavior day program. He has a master's degree in special education.

14. Social recreation and camp services were "restored" at SDRC in July 2022, after having been discontinued several years earlier as a result of budget cuts. Mr. Guzik and another SDRC manager of client services were responsible for getting the social recreation program off the ground. They worked with the Department of Developmental Services (DDS) to implement changes to SDRC's purchasing services standards which govern SDRC's decision making processes. These updated standards were approved by DDS.

Mr. Guzik summarized SDRC's process from the time a family or client requests a camp until the service is funded. The process begins with confirming whether the service provider is vendored with SDRC. The planning team then determines how the service will benefit the client and begins to develop a goal. The team meets with the family, the client, and the client's Individual Program Plan (IPP) team, who finalize the goal, write the IPP or prepare an addendum, and get signatures. The purchase of service is entered into SDRC's system so the service can be funded directly with the provider. All of the above takes time, usually from four to six weeks to complete.

When a family is aware of a service they would like, they should notify SDRC as soon as possible. SDRC can let them know if the provider is vendored and can begin

the above-referenced process. SDRC vendors are not to bill clients directly or charge them in advance for services. SDRC is required to pay the vendor directly for all services and is prohibited from providing reimbursement for a service which was completed prior to vendorization or SDRC approval.

TESTIMONY OF BRIAN URIBE, PROGRAM MANAGER

15. Brian Uribe has been a program manager for SDRC for almost 10 years; eight of those years he has worked with adults. He has a master's degree in counseling psychology. He has been in the field for 17 years and previously worked in nonprofit agencies and provided ABA therapy. Mr. Uribe supervises Mr. Moran. The following is a summary of Mr. Uribe's testimony.

16. On April 14, 2023, claimant's mother sent an email to Mr. Moran requesting information on approval for camps, ABA services to provide a one-on-one aide for camp, and speech therapy. Mr. Uribe and Mr. Moran reviewed the issues raised and prepared for a meeting with claimant's parents. Mr. Moran requested additional information regarding the camps. He notified claimant's mother that ABA services were not available for 1:1 assistance at camp. Regarding speech therapy, Mr. Moran advised claimant's mother that she would first need to go through Kaiser, claimant's private insurance, or obtain a written denial. While Speech Tree is contracted to provide speech therapy services through SDRC, per their vendorization agreement, Speech Tree is authorized to provide services only for consumers aged up to 36 months.

17. Claimant's mother requested ABA services to provide 1:1 support at camp and she asked for speech therapy sessions "to work on goals related to [claimant's] employment goals" Mr. Uribe and Mr. Moran agreed that the family

needed support and claimant needed additional assistance, but they wanted to clarify with claimant's mother what services she was actually seeking and what services may be available.

Mr. Uribe explained that ABA services are not meant to provide only support, safety and supervision. ABA services are used to reduce maladaptive behaviors and replace those behaviors with new communication skills to help the client become more independent. Although claimant's mother said she wanted speech therapy, what she described was her desire to get claimant out into the community. Services that may be more appropriate for what claimant's parents were seeking would be tailored day services (TDS), independent living training (ILT), and/or personal assistance.

18. On June 15, 2023, Mr. Uribe and Mr. Moran met with claimant's mother and father. Mr. Uribe and Mr. Moran reiterated that SDRC was denying speech therapy. They discussed that someone could go to Casa de Mosaic and teach claimant skills related to activities of daily living such as doing laundry, cooking, cleaning, and taking care of his environment. They discussed TDS, which is also 1:1 and assists clients in such areas as finding vocational opportunities, becoming independent in the community, and how to use mass transportation. These were two different services that Mr. Uribe and Mr. Moran felt were more appropriate to the family's request and met claimant's needs, rather than the ABA or speech therapy they were requesting.

After their meeting, Mr. Moran and Mr. Uribe believed they had reached an agreement with claimant's parents on the steps to move forward with personal assistance, TDS and ILT – all providing the 1:1 support claimant needed.

19. On July 13, 2023, Mr. Uribe sent a good faith letter to claimant's parents, confirming his and Mr. Moran's understanding of the agreement reached at their

meeting. The good faith letter stated that if claimant's mother was in agreement, there was nothing further that needed to be done.

20. On August 25, 2023, SDRC received claimant's appeal and fair hearing request. SDRC sent claimant an NOA.

21. Claimant's mother requested approval for claimant to attend Camp AWARE (Camp I CAN). Camp AWARE was vendored by SDRC and approved, but claimant's mother had paid for the camp out-of-pocket without SDRC approval. Claimant did not request reimbursement of these fees, however, Mr. Uribe stated that while SDRC is prohibited from reimbursing claimant's mother, the provider may be able to reimburse her.

22. Claimant's mother requested approval for TRS Camp Wet n' Wild and she requested a 1:1 support aide for claimant while attending camp. TRS is not vendored by SDRC. Claimant's mother paid out-of-pocket for claimant to attend Camp Wet n' Wild and she paid \$750 out-of-pocket for a 1:1 aide. SDRC is prohibited from reimbursing families for payment of nonvendored services, which includes that camp and the 1:1 aide.

23. As a payor of last resort, SDRC cannot fund speech therapy if it is available through another source. Even if claimant were to obtain a denial letter from Kaiser, SDRC could not fund speech therapy through Speech Tree because SDRC's vendorization with Speech Tree provides only services for children under the age of three years.

24. Claimant's family is moving forward with self-determination and currently working with Mr. Moran on a budget for claimant.

LEGAL CONCLUSIONS

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) The standard is a preponderance of the evidence. (Evid. Code, § 115.)

2. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports if appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

3. Welfare and Institutions Code, Section 4648 provides in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

[¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

4. Welfare and Institutions Code section 4659 provides in part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

5. California Code of Regulations, title 17, section 54326, subdivision (a)(8), provides that all vendors shall:

Be vendored separately for each type of service provided, as specified in Sections 54342 through 54356 of these regulations unless the regional center waives separate vendorization or 54342(a)(78)(A);

Subdivision (d)(4)(B) provides that regional centers shall not reimburse a vendor for services provided before vendorization.

Evaluation and Disposition

6. SDRC established by a preponderance of the evidence that they are prohibited from reimbursing claimant's family for the costs associated with a 1:1 aide which the family procured without SDRC approval during claimant's attendance at camp.

Claimant's family paid \$750 out-of-pocket for an aide to support claimant during TRS camp in August 2023. Their decision was completed outside the scope of claimant's IPP planning team. SDRC did not receive a request to provide funding for 1:1 support prior to claimant attending the camp, but rather SDRC was notified after the service had been completed. The aide who provided the service was not vendored by SDRC to provide those services.

California Code of Regulations, title 17, section 54326, subdivision (d)(4)(B), provides that regional centers "shall not" reimburse a vendor or claimant for services provided before vendorization.

Welfare and Institutions Code section 4648, subdivision (a)(3), provides that a regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP.

7. SDRC established by a preponderance of the evidence that they are prohibited from reimbursing claimant's family for the costs associated with claimant's attendance at TRS Camp Wet n' Wild.

Claimant's family originally requested that SDRC consider funding a camp through TRS in April 2023. SDRC requested additional information in order to consider the request. This information was not provided until July 28, 2023, one and one-half weeks before the camp was to start. SDRC is required to go through a vendorization process to approve a vendor. This process takes from four to six weeks. SDRC did not have sufficient time to process the request. Claimant's parents paid \$250 for claimant to attend the camp. However, TRS is not vendored by SDRC, and SDRC is prohibited from funding a service without vendorization of the service provider.

California Code of Regulations, title 17, section 54326, subdivision (d)(4)(B), provides that regional centers "shall not" reimburse a vendor or claimant for services provided before vendorization.

Welfare and Institutions Code section 4646.4 provides that the regional center is required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

Welfare and Institutions Code section 4648, subdivision (a)(3), provides that a regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP.

8. SDRC established by a preponderance of the evidence that they are not permitted to fund speech therapy services for claimant through Speech Tree.

As a payor of last resort, SDRC cannot fund speech therapy if this service is available through another source. Claimant's private insurance funded speech therapy, however, claimant's parents did not believe the services were appropriate for claimant so they obtained speech therapy services through Speech Tree. SDRC's vendorization

agreement with Speech Tree is specifically limited to providing speech therapy services for children under the age of three years.

California Code of Regulations, title 17, section 54326, subdivision (d)(4)(B), provides that regional centers "shall not" reimburse a vendor or claimant for services provided before vendorization.

Welfare and Institutions Code section 4648, subdivision (a)(3), provides that a regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP.

Welfare and Institutions Code section 4659, subdivision (a), provides that the regional center is required to identify and pursue all possible sources of funding for consumers receiving regional center services. A regional center is prohibited from purchasing services available from generic resources, including but not limited to, Medi-Cal, In-Home Support Services, or private insurance, when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage.

ORDER

1. Claimant's appeal from SDRC's determination that it is prohibited from reimbursing claimant's family for the costs associated with a 1:1 aide, which the family provided during his attendance at camp, is denied.

2. Claimant's appeal from SDRC's determination that it is prohibited from reimbursing claimant's family for claimant's attendance at the City of San Diego's TRS camp is denied.

3. Claimant's appeal from SDRC's determination that it is prohibited from funding speech therapy services through Speech Tree Speech Therapy Services is denied.

DATE: October 20, 2023

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.